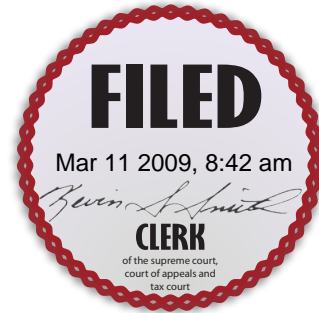


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

STEVE PIGG
Carlisle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

STEVE PIGG,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 52A02-0811-CV-1053
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable Robert A. Spahr, Judge
Cause No. 52C01-9011-CF-84

March 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Steve Pigg appeals the dismissal of his motion to compel an attorney to deliver money. We reverse.

Issue

Pigg raises one issue, which we restate as whether the trial court properly dismissed his motion to compel an attorney to deliver money.

Facts

According to Pigg, in 1991, he pled guilty to two counts of murder. A letter from Pigg's attorney, J. Richard Kiefer, to Pigg's mother stated that on January 22, 1992, Pigg's mother paid him a \$5,000 retainer for his "representation of Steve in the proceedings in the Miami Circuit Court and potentially an appeal to the court of Appeals of Indiana, or Supreme Court of Indiana." App. p. 10. A March 19, 1992 letter from Kiefer to Pigg's mother indicates that an appeal was initiated by Kiefer. No brief was ever filed, and on June 10, 1992, the appeal was dismissed.

On December 28, 2007, Pigg sent a letter to Kiefer requesting the return of the \$5000 retainer. On January 17, 2008, Kiefer responded by asserting that Pigg's request was both unwarranted and untimely.

On January 31, 2008, Pigg filed a motion to compel Kiefer to deliver money in the Miami Circuit Court under the cause number associated with his conviction. In his motion to compel, Pigg requested the return of the unearned portion of the \$5000 retainer. On February 4, 2008, the trial court dismissed Pigg's motion sua sponte on the

basis that it lacked “subject matter jurisdiction to proceed under a criminal litigation caption in connection with a collection dispute.” App. p. 14. Pigg now appeals.

Analysis

Pigg argues that the trial court improperly dismissed his motion to compel. We initially note that Kiefer did not file an appellee’s brief. “In such a case, we apply a less stringent standard of review with respect to showings of reversible error.” State v. Weyer, 831 N.E.2d 175, 177 (Ind. Ct. App. 2005). “We do not have the burden of controverting arguments advanced for reversal.” Id. Instead, Pigg needs to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. See id.

In support of his motion to compel, Pigg relies on Indiana Code Section 33-21-1-9, which is now codified as Indiana Code Section 33-43-1-9. This statute provides:

If, on request, an attorney refuses to deliver over money or papers to a person from whom or for whom the attorney has received them, in the course of the attorney’s professional employment, the attorney may be required, after reasonable notice, on motion of any party aggrieved, by an order of the court in which an action, if any, was prosecuted or if an action was not prosecuted, by the order of any court of record, to deliver the money or papers within a specified time, or show cause why the attorney should not be punished for contempt.

Ind. Code § 33-43-1-9 (emphasis added).

Referring to a previous version of this statute, our supreme court explained that this type of request is civil in nature and is appropriately characterized as a proceeding ancillary to the criminal action that resulted in a conviction. Smith v. State, 426 N.E.2d

402, 403 (Ind. 1981). The Smith court observed, “The two matters are distinct; the criminal action involved Smith and the state, while the instant matter involves Smith and his attorney.” Id. at 403-04.

Similarly, the criminal action here involved Pigg and the State, while the motion to compel involves Pigg and Kiefer. See id. at 303-04. Accordingly, the trial court improperly characterized the matter as “a criminal litigation caption in connection with a collection dispute.” App. p. 14. Because the question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs, characterizing other sorts of procedural defects as “jurisdictional” misapprehends the concepts. K.S. v. State, 849 N.E.2d 538, 542 (Ind. 2006). Thus, even assuming Pigg’s motion was improperly captioned, such an error does not necessarily rise to the level of a jurisdictional error.

As for the question of subject matter jurisdiction, the resolution of this issue involves determining whether the claim advanced falls within the general scope of authority conferred upon the court by constitution or statute. Blanck v. Ind. Dep’t of Corr., 829 N.E.2d 505, 508 (Ind. 2005). Indiana Code Section 33-43-1-9 specifically provides that the court in which the action was prosecuted may require the attorney to deliver money received. In addressing a previous version of this statute, our supreme court has concluded that the county where the original cause of action was filed “by the express provision of the statute” was the court that had jurisdiction. King v. Yundt, 209 Ind. 412, 414, 199 N.E. 236, 236 (1936).

According to Kiefer's own January 1992 letter, the proceedings in which he represented Pigg occurred in Miami Circuit Court. Because Pigg filed his motion to compel in Miami Circuit Court, that court had subject matter jurisdiction. Pigg has made a prima facie showing that the trial court improperly dismissed Pigg's motion to compel for lack of subject matter jurisdiction.

Conclusion

Pigg has made a prima facie showing that the Miami Circuit Court had subject matter jurisdiction over his motion to compel because it was the court where the criminal charges against him were prosecuted. We reverse.

Reversed.

BAILEY, J., and MATHIAS, J., concur.